

Judicial Perspectives on International Law¹

Justice Susan Glazebrook

- ***In a dualist system like ours, how do you see international law and international jurisprudence influencing judicial reasoning and decision-making in New Zealand courts?***

It is true that in Aotearoa/New Zealand international instruments are not directly enforceable unless they have been incorporated into legislation.² But many treaties have been incorporated into domestic law in whole or in part. Where this is the case, the courts will naturally draw on international sources and jurisprudence to interpret that legislation.

Some examples of incorporation include the Copyright Act 1994 which was designed to meet New Zealand's obligations under the TRIPS agreement³, the Care of Children Act 2004, which incorporates the Hague Convention on the Civil Aspects of International Child Abduction, and the Immigration Act 2009, which incorporates parts of the Refugee Convention and in particular the principle of non-refoulement.

But the influence of international law does not stop there. Even where international obligations have not been incorporated into domestic law, there is a presumption that the Legislature does not intend to act inconsistently with international legal obligations. Legislation will therefore be interpreted consistently with those obligations if possible.⁴ Decision-makers may also be required to take into account international obligations as a mandatory relevant consideration. One example of the latter is the requirement that

¹ This was a public session of the Beeby Exchange on International law, held on 27 November 2025. The discussion was moderated by Victoria Hallum, Deputy Secretary, Multilateral and Legal Affairs Group, Ministry of Foreign Affairs and Trade. The panellists were Justice Susan Glazebrook DNZM Judge of the Supreme Court of New Zealand and Dr Siofra O'Leary Former Judge and President of the European Court of Human Rights (2015-2024). This is an edited version of Justice Glazebrook's responses.

² New Zealand is a dualist state like many Commonwealth countries. This means that ratification of an international treaty is not enough to give it the force of law. For this to occur, the treaty must be incorporated into domestic legislation.

³ The Agreement on Trade-Related Aspects of Intellectual Property Rights, 1995 (World Trade Organisation).

⁴ See *Ye v Minister of Immigration* [2009] NZSC 76, [2010] 1 NZLR 104 at [24]; and *New Zealand Airline Pilots' Association Inc v Attorney-General* [1997] 3 NZLR 269 (CA) at 289.

decision makers in the immigration context take into account New Zealand's obligations under the Convention on the Rights of the Child.⁵ This Convention has also been influential in the criminal context where the sentencing of children is concerned.

International law, international jurisprudence and soft law sources such as General Comments will also be relevant to the development of the common law. And customary international law is part of the common law and therefore directly applicable to New Zealand, unless overridden by statute. And perhaps, as recent UK authority would say, as long as it is not inconsistent with basic constitutional principles, such as the separation of powers and Parliamentary sovereignty.⁶

Generally, New Zealand judges have always looked to overseas jurisprudence. Traditionally this has meant recourse to decisions from comparable common law jurisdictions but increasingly we are also looking to decisions in civil law jurisdictions and from international bodies. This applies especially in the Supreme Court given our responsibility as the final appeal court in New Zealand.

- ***What role do judges play in ensuring that international human rights obligations are meaningfully implemented at the domestic level?***

The New Zealand Bill of Rights Act 1990 (Bill of Rights) is an Act to affirm, protect and promote human rights and fundamental freedoms in New Zealand and to affirm New Zealand's commitment to the International Covenant on Civil and Political Rights. The provisions of our Bill of Rights Act do not fully incorporate the Covenant and there are some additional rights contained in the Bill of Rights, which is the main vehicle for the protection of human rights in Aotearoa/New Zealand.

⁵ The most commonly cited example of this approach is *Tavita v Minister of Immigration* [1994] 2 NZLR 257 (CA). I have argued previously that these two approaches (consistency and mandatory relevant consideration) are not really different, but rather "they just reflect the different types of international obligations that New Zealand has entered into": Susan Glazebrook "Cross-Pollination of Contamination: Global Influences on New Zealand Law" (2015) 21 *Canta LR* 60 at 64.

⁶ *R (Keyu) v Secretary of State for Foreign and Commonwealth Affairs* [2015] UKSC 69; [2016] AC 1355. For a discussion see Lord Sales "The UK Supreme Court's approach to customary international law", a presentation for the Judges at the European Court of Human Rights Strasbourg, 16 October 2025, at [36]-[55].

Under the Bill of Rights,⁷ and as an organ of state generally, judges are responsible for upholding human rights and they will be the decision makers in any court cases involving human rights. The Bill of Rights provides that, where possible, legislation must be interpreted in accordance with the rights and freedoms in the Bill of Rights⁸ but the Bill of Rights is not supreme law. This means that the courts cannot overturn legislation because it breaches any of the rights guaranteed in the Bill of Rights.⁹ The courts can, however, issue a declaration that legislation is inconsistent with the Bill of Rights in a manner that has not been justified in a free and democratic society.¹⁰ There is then a process of parliamentary scrutiny of the legislation in light of the declaration but there is no obligation to repeal or amend the legislation.¹¹

Finally, not only is legislation itself a possible barrier to the implementation of human rights obligations, but there are more practical barriers. Access to justice issues — including cost, court delays, travel times, education and technology barriers — disproportionately affect vulnerable groups, who are also most likely to experience breaches of their rights.

- ***Both of you hold prominent positions in the law – having been senior judges in apex courts. What has your journey been like as women in this field? Would you have any advice for women who might aspire to such roles?***

Mine was not the traditional path to the Bench. My first degree was an arts degree and I then went on to do a masters in history and work as a junior lecturer in history while completing my law degree. I then decided to combine three of my degree subjects, French, history and law, to do a DPhil at Oxford on the operation of the new criminal justice system in Rouen, France, during the French revolution.

⁷ Section 3 of the Bill of Rights provides that it applies only to acts done by the legislative, executive, or judicial branches of the Government of New Zealand.

⁸ Section 6 of the Bill of Rights.

⁹ Section 4 of the Bill of Rights

¹⁰ Section 5 of the Bill of Rights

¹¹ Sections 7A and 7B of the Bill of Rights.

On my return to New Zealand, I joined a large commercial law firm, and, just for a total change, ended up specialising in taxation law. And it was against that background that I accepted appointment to the High Court in 2000, the Court of Appeal in 2002 and the Supreme Court in 2012.

I always had an interest in international and comparative law, although I never studied it at university. While still in practice I was the President of the Inter-Pacific Bar Association, an organisation of business lawyers in the region. And since becoming a judge I was on the Advisory Council of Jurists for the association representing human rights commissions in the Asia-Pacific region and I have recently completed my term as President of the International Association of Women Judges.

As might be obvious my career was not a planned career. If I were to choose the most important piece of advice based on my career, it would be that you should always be open to new challenges, even if scary. The law, the legal profession and society in general are in a state of transition with, for example, the impact of developing technologies on legal practice, issues with access to justice and challenges to the rule of law around the world.

It is important in this time of transition to embrace change, as well as lifelong learning. At the same time remember that as lawyers you are part of an old and honourable profession. Respect the past but do not hesitate to question entrenched ideas and practices. Be true to your values.

Finally, law is ultimately about people. Having a life outside the law is not only essential for wellbeing but also makes you a better lawyer or judge.